IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.328 OF 2005

IN

SUMMARY SUIT NO.1011 OF 2005

Dhiren Harshadrai Desai. ...Plaintiff

vs.

1. M/s.Hemjit Corporation & another. ...Defendants

Mr.P.V.Shah, for Plaintiff.

Ms.Rekha Tawde i/b. M/s.M.V.Kini & Co. for Defendants.

CORAM: D.K.DESHMUKH,J.

DATED: 21st November,2006..

P.C.:-

1. The plaintiff has filed the suit for recovery of the amount on the basis of the bill of exchange which was drawn by the defendant no.1 and was accepted by the defendant no.2. The defendants have filed their reply. They do not dispute that the bill of exchange has been

drawn and accepted by them. The principal defence of the defendants is that they signed the bill of exchange because the plaintiff had guaranteed repayment of the loan which according to the defendants they had advanced to the friends of the plaintiff. There is no dispute that the defendants were paying interest periodically to the plaintiff. Admittedly, the last payment of interest was on 30.3.2002 and the plaint has been lodged on 28.3.2005. So far as the alleged guarantee transaction is concerned, there is no document produced on record. The defence put up by the defendants obviously has no substance.

2. So far as rate of interest is concerned, according to the defendants, there was no agreement on rate of interest. Therefore, the plaintiff in my opinion, has a right to charge interest at the rate of 18% per annum because under the provisions of Negotiable Instruments Act in the absence of any agreement between the parties the rate of interest can be charged at the rate of 18% per annum. The learned Counsel appearing for defendants submits that the defendants are willing to deposit the amount of principal in the Court and that they should be granted leave to defend. Even that suggestion cannot be accepted because I do not find that the defendants have any defence to offer. The defendants therefore, are not entitled to leave to defend the suit.

3. The summons for judgment is, therefore, granted. The suit of the plaintiff is decreed in terms of prayer clause of the suit. So far as costs are concerned, considering the nature of the defence raised by the defendants and the time of the Court that was taken up in arguing the defence which according to the defendants were available to the defendants, in my opinion, the defendants are liable to pay compensatory costs to the plaintiff. The defendants are therefore, directed to pay compensatory costs to the plaintiff. Refund of court fees as per rules.